PUBLIC PROSECUTOR v. KOH CHIN MONG

[A.C.J. (Adams J.) August 10, 1961]

[Muar — Criminal Appeal No. 28 of 1961]

Road Traffic — Licence — Vehicle without licence and certificate of insurance — Whether onus on prosecution or defence — Road Traffic Ordinance, 1958, ss.22(1) and 74(2) — Evidence Ordinance, 1950, s.106.

Where the charge is one for doing something under the Road Traffic Ordinance, 1958, for which a licence is required under that Ordinance, the burden of proof is upon the accused to show that he was in possession of the necessary licence.

Cases referred to:—

(1) *Public Prosecutor* v. *Chin Yoke*, [1940] M.L.J. 47.

(2) *Khoo Teck Yam* v. *Public Prosecutor*, [1955] M.L.J. 112.

(3) *Rex* v. *Oliver*, [1944] K.B. 68.

(4) *John* v. *Humphreys*, [1955] 1 W.L.R. 325.

CRIMINAL APPEAL.

Hamzah bin Dato' Abu Samah (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Adams J. (delivering oral judgment): The defendant stands charged with two charges of using a motor car without there being in force in respect to the said vehicle a motor vehicle licence contrary to section 22(1) of the Road Traffic Ordinance, 1958, and secondly, that the defendant used the motor vehicle without there being in force in relation to the motor vehicle a policy of insurance in respect to third party risks contrary to section 74(2) of the Road Traffic Ordinance.

The evidence established that on the 23rd August, 1960, P.C.3217 Lim Kim Sai saw the defendant driving the motor vehicle named in the charge. He stopped the motor vehicle and found that it had no current motor vehicle licence. The defendant was unable to produce any certificate of insurance in respect to the vehicle.

The learned Magistrate, Batu Pahat, discharged the accused without calling upon the defence on the grounds apparently submitted by Mr. Paramjothy that the prosecution should have produced some certificate or other evidence to prove that the vehicle was not in fact licensed and there was not in fact a certificate of insurance in respect thereto.

I was under the impression that this matter had been settled once and for all by the case of *Public Prosecutor* v. *Chin Yoke* [1] which was followed in *Khoo Teck Yam* v. *Public Prosecutor* [2]. If any more support were needed for the proposition that in a prosecution for an offence of doing something for which a licence is required under the Road Traffic Ordinance, it is unnecessary to call a licensing officer to prove the non-issue of the licence and that the burden is on the accused to negative the averment of being unlicensed by producing in this case (a) the vehicle licence, and (b) the certificate of insurance, there are the two further cases of *Rex* v. *Oliver* [3] and *John* v. *Humphreys* [4]. All the above cases apply in practice the proposition of law laid down by section 106 of the Evidence Ordinance of which both the learned Magistrate and Mr. Paramjothy must be well aware.

The order of acquittal is set aside and the case must go back to the Magistrate with a direction that he call upon the defence.

I would suggest that the Magistrate, Batu Pahat reads his Evidence Ordinance and his cases and applies what he has read to the facts of the case to be decided.

Order accordingly.

CHEN FAN CHIANG v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Good JJ.A.) August 14, 1961]

[K.L. — F.M. Criminal Appeal No. 19 of 1961]

Criminal Law and Procedure — Murder — Penal Code, s.302 — Killing in the presence of several witnesses — Conflicting evidence of witnesses — Availability of evidence for jury to find culpable homicide not amounting to murder — Possible verdict of culpable homicide not amounting to murder not left to jury — Statement of witness sought to be used under Criminal Procedure Code (Cap. 6), s.113(ii) — Effect of failure of trial Judge to allow it to be used to impeach credit of witness.

On a charge of murder where there is evidence, whether reliable or not, which if accepted would entitle the jury to bring in a verdict of culpable homicide not amounting to murder, the charge to the jury must leave open the possibility of bringing in a verdict of culpable homicide not amounting to murder even if no defence is relied upon which would reduce the charge from one of murder to one of culpable homicide not amounting to murder.

Observations upon effect of trial Judge's failure to permit a statement of a witness to be used to impeach credit of witness under section 113(ii) of the Criminal Procedure Code.

Cases referred to:—

(1) *R.* v. *Hopper*, [1915] 2 K.B. 431.

(2) *Kwaku Mensah* v. *The King*, [1946] A.C. 83.

(3) *Bullard* v. *The Queen*, [1957] A.C. 635.

COURT OF APPEAL (CRIMINAL).

David Marshall for the appellant.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted for murder at the Johore Bahru Assizes on 9th July this year and was sentenced to death. Against that conviction he has now appealed.

The charge against the appellant was that on 2nd February, sometime before dawn, in or close to a bus at the entrance to an estate at Kulai he killed one Moo Kim Sang in circumstances which made the killing murder.

There is no doubt that at the time and place in question Moo Kim Sang was killed by the insertion of a rubber-tapping knife into a vital